

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 47:090. Solid waste permit fees.

6 RELATES TO: KRS 224.10, 224.40, EO 2008-507, 2008-531

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, EO 2008-507, 2008-531

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) states that the
9 cabinet may establish by administrative regulation a schedule of fees for the cost of processing
10 permit applications. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the
11 Environmental and Public Protection Cabinet and establish the new Energy and Environment
12 Cabinet. This administrative regulation establishes a schedule of fees for solid waste permit
13 applications.~~[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation~~
14 ~~for a reasonable schedule of fees for the cost of processing applications for permits, exemptions,~~
15 ~~and partial exemptions. This chapter establishes standards for solid waste sites or facilities. The~~
16 ~~purpose of this administrative regulation is to establish a fee schedule for the issuance and~~
17 ~~modification of solid waste disposal permits or variances.]~~

18 Section 1. Applicability. ~~[(4)]~~ The provisions of this administrative regulation shall apply to
19 a person~~[the owner or operator of each solid waste site or facility]~~ required to apply for a solid
20 waste site or facility permit, permit renewal, or modification~~[or exemption]~~, except for persons
21 applying for publicly-owned facilities.

Section 2. Permit Application Review Fee. (1) A person required to apply for a solid waste site or facility permit shall include, with the application, a check or money order made payable to Kentucky State Treasurer for the filing fee based on the following tables:

Table I: Disposal Facility Application Fees

<u>Application Type</u>	<u>Technical Review Time</u>	<u>Application Fee</u>
<u>Contained or construction/demolition debris landfill notice of intent to apply</u>	<u>30 working days</u>	<u>\$2,500</u>
<u>Residual landfill notice of intent to apply</u>	<u>30 working days</u>	<u>\$2,000</u>
<u>Landfill administrative application</u>	<u>60 working days</u>	<u>\$10,000</u>
<u>Contained landfill technical application</u>	<u>90 working days</u>	<u>\$25,000</u>
<u>Contained landfill construction progress report</u>	<u>10 calendar days</u>	<u>\$6,000</u>
<u>Construction/demolition debris landfill technical application</u>	<u>90 working days</u>	<u>\$15,000</u>
<u>Construction/demolition debris landfill construction progress report</u>	<u>10 calendar days</u>	<u>\$4,500</u>
<u>Residual landfill technical application</u>	<u>90 working days</u>	<u>\$12,000</u>
<u>Residual landfill construction progress report</u>	<u>10 calendar days</u>	<u>\$3,500</u>
<u>Vertical Expansion, less than two years additional capacity</u>	<u>180 calendar days</u>	<u>\$3,000</u>
<u>Groundwater monitoring well, closure, and engineering feature construction progress report</u>	<u>90 calendar days</u>	<u>\$3,000</u>
<u>Vertical expansion, greater than two years additional capacity</u>	<u>180 calendar days</u>	<u>\$6,000</u>
<u>Landfill minor modification application</u>	<u>180 calendar days</u>	<u>\$2,500</u>
<u>Liner reduction or Variance Request</u>	<u>180 calendar days</u>	<u>\$6,000</u>
<u>Add or delete source for a contained landfill or construction/demolition debris landfill</u>	<u>180 calendar days</u>	<u>\$3,000</u>
<u>Construction permit, only, five year renewal</u>	<u>180 calendar days</u>	<u>\$4,000</u>
<u>New or major modification to a incinerator or waste-to-energy permit</u>	<u>90 calendar days</u>	<u>\$20,000</u>
<u>Incinerator, waste-to-energy, or non-landfill liner solid waste construction progress report</u>	<u>90 calendar days</u>	<u>\$3,000</u>

Table II: Registered Permit-by-Rule Application Fees

<u>New or Modification Application Type</u>	<u>Technical Review Time</u>	<u>Application Fee</u>
<u>New or modification to a transfer station or convenience center</u>	<u>90 calendar days</u>	<u>\$2,500</u>
<u>New, or modification to a less-than-one acre construction/demolition debris landfill</u>	<u>90 calendar days</u>	<u>\$4,500</u>
<u>New or modification to a compost facility</u>	<u>90 calendar days</u>	<u>\$3,000</u>
<u>New or modification to a Class I landfarm facility</u>	<u>90 calendar days</u>	<u>\$4,000</u>

Table III: Application Fees for Other Types of Facilities

<u>New or Modification Application Type</u>	<u>Technical Review Time</u>	<u>Application Fee</u>
<u>New, substantial expansion or major modification to a Class II landfarm facility</u>	<u>180 calendar days</u>	<u>\$17,000</u>
<u>Class II landfarm facility permit minor modification</u>	<u>180 calendar days</u>	<u>\$5,000</u>
<u>New or modification to a research, demonstration and development permit</u>	<u>180 calendar days</u>	<u>\$7,000</u>
<u>Emergency permit</u>	<u>90 calendar days</u>	<u>\$600</u>
<u>Beneficial Reuse determination</u>	<u>90 calendar days</u>	<u>\$750</u>

Table IV: Facility Ownership Fees

<u>New or Modification Application Type</u>	<u>Technical Review Time</u>	<u>Application Fee</u>
<u>Name or ownership change, only</u>	<u>180 calendar days</u>	<u>\$500</u>
<u>Bond revision, only</u>	<u>90 calendar days</u>	<u>\$250</u>

Section 3. Failure To Submit Fee. (1) If the applicant fails to submit the fee established in Section 2 of this administrative regulation during the administrative completeness review established in 401 KAR 47:025, Section 3, the cabinet shall deny the permit application.

(2) If the applicant for a new landfill or horizontal expansion of an existing landfill fails to submit the fee established in Section 2 of this administrative regulation during the technical review period established in KRS 224.40-310(10), the cabinet shall deny the permit application.

Section 4. Refunds. (1) Except as provided in subsection (2) of this section, if the technical review time (TRT) of a permit application by the cabinet exceeds the TRT listed in Section 2 of this administrative regulation established pursuant to KRS 224.40-310(10)(a), (b), or (c); or 401 KAR 47:025, Section 4, the owner or operator shall receive the refund of the application fee listed in Section 2 of this administrative regulation pursuant to KRS 224.10-220(3).

(2) Exceptions to subsection (1) of this section shall include:

(a) An order of agreement allowed pursuant to KRS 224.40-310(10)(e); or

(b) The agreement allowed by 401 KAR 47:025, Section 4(2).

Section 5. Annual Permit Fee. (1) The owner or operator shall submit the amount of the annual permit fee by the due date established for the type of facility pursuant to Table V below.

(2)(a) The owner or operator shall submit the fee with Annual Solid Waste Permit Renewal Fee, DEP 7119.

(b) If the owner or operator fails to submit the annual permit fee required by Table V, the cabinet shall suspend the permit until the payment is received.

Table V: Annual Permit Fee

<u>Permit type</u>	<u>Due date for fee</u>	<u>Annual fee</u>
<u>Contained landfill</u>	<u>December 31</u>	<u>\$7,500</u>
<u>Construction/demolition debris landfill</u>	<u>December 31</u>	<u>\$7,000</u>
<u>Residual landfill</u>	<u>December 31</u>	<u>\$6,500</u>
<u>Incinerator or waste-to-energy</u>	<u>December 31</u>	<u>\$4,000</u>
<u>Transfer station or convenience center</u>	<u>March 31</u>	<u>\$1,200</u>
<u>Less-than-one acre construction/demolition debris landfill</u>	<u>September 30</u>	<u>\$3,000</u>
<u>Compost facility</u>	<u>December 31</u>	<u>\$3,000</u>

<u>Class I landfarming facility</u>	<u>December 31</u>	<u>\$3,500</u>
<u>Class II landfarming facility</u>	<u>December 31</u>	<u>\$6,500</u>
<u>Research, demonstration and development permit</u>	<u>December 31</u>	<u>\$6,000</u>

Section 6. Inflation. (1)The permit fees in this administrative regulation shall be adjusted each July, beginning July 1, 2010.

(2) For each calendar year, upon publication of the “Annual Consumer Price Index for all Urban Consumers” by the U.S. Department of Labor, the permit fees shall be adjusted by applying the annual increase in the consumer price index to the fee level from the previous year.

(3) Adjusted fee amounts for each year shall be posted on the division’s Web site at www.waste.ky.gov/branches/sw/.

Section 7. Incorporation by Reference. (1) “Annual Solid Waste Permit Renewal Fee”, DEP 7119, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 200 Fair Oaks Lane, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the division’s Web site at www.waste.ky.gov.

~~[(2) The provisions of this administrative regulation shall apply to solid waste site or facility permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete as determined by the cabinet, by the effective date of this administrative regulation. Solid waste site or facility permit applications which are complete as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to the provisions of 401 KAR 47:090E as in effect on January 16, 1990.~~

Section 2. Filing Fees. (1) Any owner or operator may submit a notice of intent to apply for a solid waste facility permit, permit modification, or variance for initial review and shall include with the notice of intent to apply a check or money order for the filing fee determined by the schedule below:

Application Type	Fee
Review of the notice of intent to apply to determine site suitability	\$500
Preliminary permit modification application review to determine site suitability for expansion	\$500
Preliminary request for variance of design criteria	\$500

(2) Any owner or operator who submits an administrative phase of a permit application for a new solid waste site or facility or an application for expansions to existing facility sites shall include with the application a check or money order for the filing fees determined by this subsection.

(a) The filing fees listed below for the administrative phase of a permit application shall be submitted with the application:

Solid Waste Facility Type	Fee
Construction/demolition debris landfill	\$ 5,000
Contained landfill	\$10,000
Residual landfill	\$ 2,500

1 ~~(b) Any owner or operator who submits a technical phase of a permit application for a solid~~
2 ~~waste site or facility shall include with the application the filing fee listed below:~~

Solid Waste Facility Type	Fee
Construction/demolition——debris landfill	\$5,000
Contained landfill	\$5,000
Residual landfill	\$2,500

3 ~~(3) Upon notification to the cabinet that construction for any phase has been completed,~~
4 ~~any owner or operator who notifies the cabinet that the facility has been constructed and requests~~
5 ~~the issuance of a permit to operate, or a modification to a permit to operate a solid waste site or~~
6 ~~facility, shall include with the request a check or money order in the amount of the filing fee,~~
7 ~~assessed in accordance with the following schedule:~~

Solid Waste Facility Type	Fee
Contained landfill	\$800
Residual landfill	\$500
Residential landfill	\$500
Landfarming facility	\$500
Inert landfill	\$200
Construction/demolition——debris landfill	\$500

8 ~~(4) Any owner or operator who submits an application for renewal of an existing solid~~
9 ~~waste facility permit, shall include with the application a check or money order in an amount equal~~

to the number of years for which the facility permit shall be renewed multiplied by the amounts listed below:

Solid Waste Facility Type	Amount per Year
Inert landfill	\$300
Residential landfill receiving less than 200 tons per day	\$500
Residential landfill receiving 200 or more tons per day	\$3,000
Construction/demolition——debris landfill receiving less than 200 tons per day	\$500
Construction/demolition——debris landfill receiving 200 or more tons per day	\$3,000
Contained landfill	\$3,000
Residual landfill	\$500
Landfarming facility	\$300

(5) Any renewal for a construction permit for which fees are not required under subsection (4) of this section shall be \$500.

(6) Any owner or operator who submits an application for a solid waste facility permit modification shall include with the application a check or money order for the fee listed below:

1 ~~(a) \$1,000 for modifications involving operating methods or proposed closure.~~

2 ~~(b) \$50 for modifications for additional wastes not listed in the approved permit~~
3 ~~application.~~

4 ~~(c) \$500 for a request for variances from existing permit requirements.~~

5 ~~(d) \$500 for change of ownership of an existing permitted facility.~~

6 ~~(7) Any owner or operator who submits an application for the following permits shall~~
7 ~~include a check or money order as listed below:~~

8 ~~(a) \$1,000 for application for closure of a solid waste site not under a current solid waste~~
9 ~~facility permit.~~

10 ~~(b) \$500 for application for approval of emergency permits.~~

11 ~~(c) \$500 for application for approval of research, development and demonstration permits.~~

12 ~~(d) \$5,500 for application for approval of landfarming permits.~~

13 ~~(8) Filing fees are not refundable if an application for a permit, modification, or variance is~~
14 ~~denied or an application is withdrawn after the review is initiated.~~

15 ~~(9) Submittal of fees. The required fees shall be submitted to the cabinet. All checks or~~
16 ~~money orders shall be made payable to the Kentucky State Treasurer.]~~

401 KAR 47:090 approved for filing.

Date

Henry C.A. List, Deputy Secretary
Signing for
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 29, 2009 at 9:30 A.M. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 22, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: George Gilbert, P.E.
Division of Waste Management
200 Fair Oaks Lane, 2nd Floor
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: George.Gilbert@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: George Gilbert, P.E.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a schedule of fees for solid waste permit applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the cabinet to have the funds necessary to continue to review applications received for solid waste permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100(20) by establishing a schedule of fees for the processing of permit applications, and exempting publicly-owned facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by charging fees for permit applications. Without fees for permit applications, there would not be adequate staff to review permit applications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing fees for most permit applications and by charging fees for permit applications that did not previously have fees associated with them.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the fees currently charged for solid waste permitting in the Commonwealth. The program currently costs approximately \$1.6 Million to run, and only brings in approximately \$200,000 per year.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by only charging the cost it takes to review permits to privately-owned facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assists in the effective administration of the statutes by charging a fee for permits for privately-owned facilities.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities affected are privately-owned.

Type of Facility	Number
Contained landfills	20
Construction/demolition debris landfills	6
Residual landfills	10
Less-than-one acre construction/demolition debris landfills	45
Incinerator and waste-to-energy facility	1
Transfer stations and convenience centers	51
Class I landfarms	3
Compost facilities	13
Class II landfarm	1
Research, demonstration and development permit	1
Voluntary beneficial reuse application	3 per year

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have fee increases for applications. The regulation also changes the permit renewal fee to an annual fee. Currently private facilities pay a much larger lump sum on a five year basis, and the annual fee would make it easier to budget.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost facilities the following amounts:

Type of Facility	Cost/Yr.
Contained landfills	\$13,400
Construction/demolition debris landfills	\$7,600
Residual landfills	\$7,700
Less-than-one acre construction/demolition debris landfills	\$4,100
Incinerator and waste-to-energy facility	\$15,100
Transfer stations and convenience centers	\$1,700
Class I landfarms	\$5,000
Compost facilities	\$3,700
Class II landfarm	\$7,000
Research, demonstration and development permit	\$6,500
Voluntary beneficial reuse application	\$810/application

The permit fees in this administrative regulation shall be adjusted annually based on the “Annual Consumer Price Index for all Urban Consumers” inflation factor published by the U.S. Department of Labor.

If the fees increases would be passed on to citizens, it would cost citizens \$0.18 per year statewide.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit provided to the entities identified above is the state will be able to continue to provide a solid waste permit program. Compliance with the permit protects human health and the environment while providing some legal protection from frivolous lawsuits. The solid waste permit program enables the cabinet to maintain active lists for persons seeking to do business with a particular type of facility, such as a landfill or transfer station.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: An increase of \$8,000 per year to \$11,000 per year.
- (b) On a continuing basis: \$11,000 per year.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded by the fees collected pursuant to this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There should be no need to increase fees more than proposed in this administrative regulation in order to implement this amendment.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation increases fee associated with permitted solid waste facilities.
- (9) TIERING: Is tiering applied? (Explain why or why not) Yes. Owners or operators of larger, more complex facilities, such as contained landfills and incinerators, pay more than smaller, less engineered facilities, such as transfer stations. This is due to the nature of engineering plans and geological studies required for more complex facility permits, and the longer time needed to review a landfill application compared to a transfer facility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 47:090

Contact Person: George Gilbert, P.E.

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?
Yes X No
If yes, complete questions 2-4.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The promulgating agency will collect money on an annual basis which allows for a stable funding source. Local governments and state government facilities are exempt from paying these fees by KRS 224.10-100(20).
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(20)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? About \$0.8 million for the state.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? About \$0.8 million for the state.
 - (c) How much will it cost to administer this program for the first year? About \$11,000.
 - (d) How much will it cost to administer this program for subsequent years? About \$11,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 47:090**

I. This administrative regulation incorporates by reference the “Annual Solid Waste Permit Renewal Fee”, DEP 7119. This form is used by owners and operators of permitted solid waste sites and facilities to submit the annual fee for the facility.

This document consists of 1 page.